

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DEVONTE KING,

Plaintiff,

vs.

JOEL JAY,

Defendant.

8:21CV242

**MEMORANDUM
AND ORDER**

Plaintiff was a prisoner at the Lincoln County Detention Center when he filed his Complaint on June 25, 2021, but he was released from custody on July 15, 2021. (See Filings 1, 7.) Plaintiff has been granted leave to proceed in forma pauperis as a nonprisoner. (See Filings 3, 8.) The court will now conduct an initial review of Plaintiff's Complaint (Filing 1).

I. STANDARDS ON INITIAL REVIEW

The court is required to review in forma pauperis and prisoner complaints to determine whether summary dismissal is appropriate. *See* 28 U.S.C. §§ 1915(e) & 1915A. The court must dismiss a complaint or any portion of it that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b).

“The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party ‘fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.’” *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014) (quoting *Hopkins v. Saunders*, 199 F.3d 968, 973 (8th Cir. 1999)). Plaintiffs must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed.” *Bell Atlantic Corp. v. Twombly*,

550 U.S. 544, 569-70 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”).

“A pro se complaint must be liberally construed, and pro se litigants are held to a lesser pleading standard than other parties.” *Topchian*, 760 F.3d at 849 (internal quotation marks and citations omitted). This means that “if the essence of an allegation is discernible, even though it is not pleaded with legal nicety, then the district court should construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Stone v. Harry*, 364 F.3d 912, 915 (8th Cir. 2004). However, even pro se complaints are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980).

II. SUMMARY OF COMPLAINT

Plaintiff complains he is being held in jail without bail and is being denied his right to due process, his Sixth Amendment right to a speedy trial before a jury, his Fifth Amendment right against self-incrimination, and his Eighth Amendment right against cruel and unusual punishment. Plaintiff also claims a pending criminal charge, for driving without a license, is unconstitutional because it impinges upon his right to travel.

Plaintiff alleges, “I was arrested for involuntary servitude I did not consent to see a doctor from [defendant] Joel Jay against my right to life liberty and the pursuit of happiness.” He further alleges that since June 17, 2021, the defendant has been “trespassing by way of forgery unlawful orders and threats” and has acted arbitrarily.

For relief, Plaintiff wants to be released from jail until he is found guilty of a crime, and he seeks to recover \$75,000 in damages. The first request for relief is now moot because Plaintiff has been released from jail.

official capacities are ‘persons’ under § 1983.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Further, the Eleventh Amendment bars claims for damages by private parties against a state, state instrumentalities, and employees of a state sued in the employee’s official capacity. *See, e.g., Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995); *Dover Elevator Co. v. Arkansas State Univ.*, 64 F.3d 442, 446-47 (8th Cir. 1995).

Even when sued personally, a judge is immune from suit under section 1983 in all but two narrow sets of circumstances. *Schottel v. Young*, 687 F.3d 370, 373 (8th Cir. 2012). “First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge’s judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.* (internal quotation and citations omitted). An act is judicial if “it is one normally performed by a judge and if the complaining party is dealing with the judge in his judicial capacity.” *Id.* (internal quotation and citations omitted).

Here, although it is alleged that Judge Jay violated Plaintiff’s constitutional rights, there are no facts alleged to suggest that Judge Jay acted outside the scope of his duties as a member of the Nebraska judiciary. Nebraska law provides that county court judges have jurisdiction in any criminal matter classified as a misdemeanor. *see* Neb. Rev. Stat. § 24-517(6), which is the nature of the charges filed against Plaintiff. County court judges also have authority to order medical, psychiatric, or psychological evaluation to determine a criminal defendant’s competency to stand trial. *See* Neb. Rev. Stat. §§ 29-1823(1).

IV. CONCLUSION

The court finds that *Younger* abstention is appropriate in this case because of Plaintiff’s ongoing criminal proceedings in state court. The court further finds that dismissal is the appropriate method for abstention because Plaintiff’s damage claims are barred as a matter of law.

IT IS THEREFORE ORDERED:

1. This action is dismissed without prejudice.
2. Judgment shall be entered by separate document.

Dated this 27th day of July 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge